IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7276 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

SURESHKUMAR PREMRAJ JAIN

Versus

COMMISSIONER OF POLICE

Appearance:

1. Special Civil Application No. 7276 of 2001

MR ANIL S DAVE for Petitioner No. 1

MR KAMEN N SHUKLA for Petitioner No. 1

MR S.S. PATEL, AGP for Respondent State

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 16/01/2002

ORAL JUDGEMENT

The petitioner came to be detained by virtue of an order dated 12th August, 2001 passed by the Commissioner of Police, Surat City in exercise of power under Section 3 of the PASA Act. The petitioner seeks to challenge the said order by this petition under Article 226 of the of Constitution of India.

2. The grounds of detention indicate that the petitioner has been branded as a boot-legger. The detaining authority has considered one offence registered against the detenu at Vapi on 26th March, 2001. The detaining authority has also considered statements of two anonymous witnesses recorded on 22.7.2001, which have been verified on 9.8.2001, and have come to the conclusion that the activity of the detenu is anti-social and detrimental to public health and public order.

3. The learned Counsel for the petitioner restricted his arguments to the fact that there is nothing to indicate that there was disturbance to public health and public order. The statements are assailed on the ground of improper exercise of powers under Section 9(2) of the PASA Act, stating that there was absence of any contemporaneous, cogent material to indicate that the powers are required to be exercised, as against the right of the detenu envisaged under Art. 22(5) of the Constitution of India. He placed reliance on the decisions of the apex Court in Bai Amina w/o Ibrahim Abdul Rahim Alla Vs. State of Gujarat, reported in 1989 GLR 1186 and Chandrakant Patel Vs. State of Gujarat, reported in 1`994 (1) GLR 761.

4. Learned AGP Mr. S.S. Patel has opposed this petition.

5. Having regard to the rival side contentions, it is amply clear that the subjective satisfaction recorded by the detaining authority is not genuine. There is gross delay in passing the order. The offence was registered against the petitioner at Vapi on 26.3.2001, whereas the order is passed on 12.8.2001 i.e. after a long gap of about four and a half months between the registered offence and the passing of order and the live-link between the activity of the petitioner and the order is snapped. So far as statements of witnesses are concerned, the satisfaction recorded by the detaining authority is not on basis of any cogent material. As observed by the apex Court in Bai Amina w/o Ibrahim Abdul Rahim Alla Vs. State of Gujarat, reported in 1989 GLR 1186, the authority is expected to consider the general background, character, antecedents, criminal tendency or propensity, etc. of the detenu and such of those matters as are relevant in the context of the informant must be enquired into and carefully examined by the detaining authority with a view to satisfying itself that the alleged apprehension is not imaginary or fanciful or that it is not merely an empty excuse invented by the informant, inter alie, to protect himself against the

falsity of his version being exposed by an effective explanation of the detenu or to hide his own involvement or to conceal his enmity with the detenu.

5.1 In order to meet with this requirement, the detaining authority would be required to undertake a further exercise in addition to examining the anonymous witnesses. There is nothing to indicate that such an exercise is undertaken. A witness who has stated something before the functioning authority is bound to stick to his version before the detaining authority when he is summoned for verification, but what is stated by him is correct and genuine or not can be tested only after his version is cross-checked through other sources by undertaking further exercise. That having not been done, the subjective satisfaction cannot be said to have been recorded on the basis of any material and therefore, there is improper exercise of power under Section 9(2) of the PASA Act.

5.2 It would also be proper to record that while exercising powers under Section 9(2) of the PASA Act, the authority is expected to weigh the constitutional right of the detenu on one hand and the public interest on the other and only if the public interest out-ways the constitutional right of the detenu, the power under Section 9(2) can be exercised. This would also call for some exercise, which is required to be indicated and that not having been done, the order of detention cannot be permitted to stand. The continued detention of the detenu therefore, is vitiated. The petition deserves to be allowed and the same is allowed.

6. The petition is therefore, allowed. Order of detention dated 12th August, 2001 passed by the Commissioner of Police, Surat is quashed and set aside. Detenu Sureshkumar Premraj Jain be released from detention forthwith, if not required in any other case. Rule made absolute. No costs. Direct service permitted.

(A.L.Dave,J.)

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